

REMARKS

A new Action is required, because the Response of January (3) 7, 2008, was non-complaint and, therefore, should not have been entered. The non-compliance is the inadvertent strike-out and underlining of "ing" in claim 1 recognized, instead of as the non-compliance it is, as a rejection under 35 USC 112, second paragraph, in the Action of February 11, 2008, that, therefore, should not have issued.

The new Action required permits the addition of claim 20, which is directed to the same invention as claim 1.

The rejection of claim 12 under 35 USC 112, first paragraph, is not well taken for two reasons. Page 2, line 5, of the original specification describes base shoes as originally in claim 12 as comprising sole portions as now claimed, while page 3, lines 1-2, of the original specification describes the base shoes as being provided in a range of shapes and sizes. The originally discloses a range of shapes and sizes of the base shoes that, therefore, comprehends the range of shapes and sizes for the sole portions of the base shoes now claimed. This would be particularly the true for the non-proportionality of footwear sizes and shapes well known in the art.

The rejection of claim 1 under 35 USC 112, second paragraph, mis-apprehends usage of "respectively" for a one-to-one correspondence of plurals ("relating to each distributively") and proposes language wherein each of plural covers has only one sheath, which is not the case and, indeed, the opposite of the claimed invention.

The rejection of independent claim 1 and as it might be applied to new claim 20 under 35 USC 102 for anticipation by the cited Marx patent is still traversed because:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *MPEP* 2131 (citation omitted).

The independent claims are not anticipated, because the lower edges of the uninterrupted sheaths of the Marx patent are not continuous, as claimed, but rather "... are provided [by] a series of spaced apart anchoring members (Figs. 1 and 2) ..." as specifically described at page 2, left-hand column, lines 3-4, and shown in these Figs.

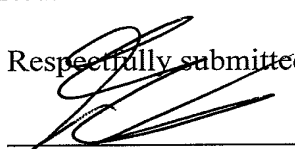
Fig. 1 of the Marx patent discloses a sandal as described at page 1, right-hand column, line 24. As a sandal, its sheath 26 is a strap or, as shown, crossed straps, which are not uninterrupted, as claimed. A sandal must have an open, interrupted, i.e., strapped sheath, or it is not a sandal. A sandal is only strapped to a foot and straps cannot provide the uninterrupted sheath claimed. The interruption of the sheath required by the strap(s) of a sandal also mean that the lower edges of the sheath cannot be continuous as also claimed and as, indeed, they are not in Fig. 1 of the Marx patent.

Fig. 2 of the Marx patent discloses lower edges of an uninterrupted sheath that also are not continuous, as specifically described in the patent, but not as claimed. The lower edges of the uninterrupted sheaths claimed are continuous.

Therefore, as the Marx patent does not explicitly or inherently describe every element claimed, it cannot anticipate the claimed invention.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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